



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0194]

RIN 1625-AA00

Safety Zone: Santa Cruz Harbor Shoaling, Santa Cruz County, CA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is establishing an emergency safety zone in the navigable waters of Santa Cruz County, California due to severe shoaling at the entrance to Santa Cruz Harbor that has created hazardous conditions for vessels transiting the harbor. This emergency safety zone is established to ensure the safety of the mariners and vessels from the dangers associated with the severe shoaling. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port or a designated representative. This regulation is necessary to provide for the safety of life on the navigable waters in vicinity of the Santa Cruz Harbor entrance.

DATES: This rule is effective and may be enforced with actual

notice from March 18, 2016 until May 1, 2016. This rule may be enforced with constructive notice from [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER] until May 1, 2016.

Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2016-0194. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may submit comments, identified by docket number, using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail If you have questions on this rule, call or e-mail Lieutenant Marcia Medina, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7443 or e-mail at D11-PF-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port
CY	Cubic Yards
APA	Administrative Procedure Act

A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this interim rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

B. Regulatory History and Information

Ongoing shoaling caused by El Niño weather patterns has been observed within the Santa Cruz Harbor in Santa Cruz, CA. El Niño has caused ocean currents, swells and surf to shift from the prevailing northwesterly direction to southerly, directly into the federal channel. Rain storms in December 2015 and January 2016 contributed large volumes of sand and debris from the San Lorenzo River and its tributaries, as well as other coastal streams west and north of the Santa Cruz Harbor federal channel to cause severe shoaling at the entrance of Santa Cruz Harbor. According to the Santa Cruz Port District, "unusually high shoaling rates in the entrance channel, to date, have produced approximately 310,000 cubic yards (CY) of sand. Of that amount, 200,000 CY were dredged between December 10, 2015, and February 29, 2016, and an estimated 110,000 CY remains within the federal channel."

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard received the information about the severe shoaling within the harbor on March 4, 2016, and determined that good cause exists to establish an emergency safety zone to protect life and property of mariners in the area. The El Niño season has caused significant and unexpected shoaling within the Santa Cruz Harbor Channel. The shoaling presents a significant hazard to navigation as the charted depths are no longer accurate and the resulting surf conditions have created inherent hazards for all vessels transiting the area. Immediate regulatory action is required to safeguard life, health and property of mariners in the area. Notice and Comment on this rule is impracticable because it would delay the Safety Zone and consequently put mariners and dredging crews at risk of collision and groundings.

On February 4, 2016, the Santa Cruz Port District declared that a state of emergency exists warranting expenditure of public funds to finance the emergency dredging of the harbor. The Coast Guard requested immediate assistance from the Army Corps of Engineers to conduct emergency dredging as soon as safe and practicable on March 8, 2016. The Coast Guard received the information about the severe shoaling within the harbor on March 4, 2016, and determined an emergency safety zone was necessary to protect life and property of mariners in the area.

C. Basis and Purpose

The Coast Guard is issuing this rule under authority in 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The Santa Cruz Harbor Shoaling safety zone will encompass the entire entrance to Santa Cruz Harbor in the area contained within two borders. A northern border defined by the line created by extending the Santa Cruz Harbor boat launch ramp to the harbor's opposite shore and a southern border defined by the line connecting the end points of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart

18685. Due to the shifting shoaling locations, the safety zone applies to the navigable waters enclosed by these borders, effectively encompassing all of the Santa Cruz Harbor Entrance. This safety zone is effective immediately upon promulgation until 10 p.m. on May 01, 2016 or until emergency dredging is completed. The Coast Guard will issue a Broadcast Notice to Mariners upon the completion of emergency dredging and the deactivation of the safety zone. This safety zone is meant for safety of vessels transiting the harbor. This restricted area in the harbor is necessary to protect mariners, vessels, and other property from the hazards associated with severe shoaling. The Coast Guard has issued notice to mariners warning of significant shoaling at the harbor entrance that may result in breaking surf between the jetties.

D. Discussion of the Interim Rule

The Coast Guard is establishing an emergency safety zone that will encompass the navigable waters of the Santa Cruz Harbor entrance channel as defined by the area contained within two borders: a northern border defined by the line created by extending the Santa Cruz Harbor boat launch ramp to the harbor's opposite shore and a southern border defined by the line connecting the end points of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater as depicted in

National Oceanic and Atmospheric Administration (NOAA) Chart 18685. This emergency safety zone will be effective immediately upon promulgation until 10 p.m. on May 01, 2016 or until the completion of emergency dredging. The Coast Guard will issue a Broadcast Notice to Mariners upon the completion of emergency dredging and the deactivation of the safety zone. The effect of the temporary safety zone will be to restrict navigation of all vessels in the vicinity of the severe shoaling. Except for persons or vessels authorized by the Captain of the Port or his designated representative, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep all vessels away from the severe shoaling to ensure the safety of all transiting vessels.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3)

of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities. Vessel traffic has been very limited since December 11, 2015 due to soundings being approximately less than 02 feet at the entrance of the Santa Cruz Harbor. Local officials have been proactive in notifying the public of the hazardous conditions associated with the severe shoaling in the channel. Signage, boating notices, and verbal advisories have been issued to the public via the Harbor Master. Detailed information regarding the harbor conditions have been posted on <http://www.santacruzharbor.org/> and weekly emails have been delivered.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-

612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. Due to the shifting locations of the shoaling, which causes erratic changes in channel depth, all traffic has been limited in transiting the Santa Cruz Harbor Channel. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners. Vessel traffic currently cannot pass safely around the safety zone area. If deemed safe, traffic would be allowed to pass through the zone with the permission of the Captain of the Port or his designated representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We

have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves limiting all vessel traffic in the through the Santa Cruz Harbor Entrance Channel due to the hazardous conditions associated with the severe shoaling occurring in the area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11-0194 to read as follows:
§165.T11-0194 Safety Zone; Santa Cruz Harbor Shoaling, Santa Cruz, CA.

(a) Location. This safety zone is established in the navigable waters of the Monterey Bay near the Santa Cruz Harbor Entrance in Santa Cruz, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18685. The safety zone applies to the navigable waters of the entrance of Santa Cruz Harbor as defined by the area contained with two borders: a

northern border defined by the line created by extending the Santa Cruz Harbor boat launch ramp to the harbor's opposite shore and a southern border defined by the line connecting the end points of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18685. This emergency safety zone will be effective immediately upon promulgation until 10 p.m. on May 1, 2016, or until the completion of emergency dredging. The Coast Guard will issue a Broadcast Notice to Mariners upon the completion of emergency dredging and the deactivation of the safety zone. This safety zone is meant for safety of all vessels transiting the harbor. This restricted area in the harbor is necessary to protect vessels, and other property from the hazards associated with severe shoaling. The Coast Guard has issued notice to mariners warning of significant shoaling at the harbor entrance that may result in breaking surf between jetties.

(b) Enforcement period. The safety zone described in paragraph (a) of this section will be enforced immediately upon promulgation until 10 p.m. on May 1, 2016, or upon the completion of emergency dredging. The Coast Guard will issue a Broadcast Notice to Mariners upon the completion of emergency dredging and the deactivation of the safety zone. The Captain of the Port San Francisco (COTP) will notify the maritime community

of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated to assist in the enforcement of the safety zones.

(d) Regulations. (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels requesting permission to enter the safety zone from 9 A.M. to 5 P.M may contact the Harbor Master on VHF-9 or via telephone at (831) 475-6161; or through the 24-hour Command Center at telephone (415) 399-3547.

Dated: March 18, 2016

Gregory G. Stump

Captain, U.S. Coast Guard

Captain of the Port San Francisco

[FR Doc. 2016-08220 Filed: 4/8/2016 8:45 am; Publication Date: 4/11/2016]